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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,) No. CR 08-00222 WHA
12)
13) No. CR 14-MJ-70731 MAG
14 v.)
15 LUKE BRUGNARA,) **ORDER OF DETENTION**
16)
17 Defendant.)

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19 These related matters came before the Court on May 30, 2014. In CR 08-222 WHA,
20 Defendant Luke Brugnara was convicted of three counts of filing a false tax return and sentenced
21 on May 24, 2010 to 30 months custody. He is currently on supervised release as a result of that
22 conviction. On May 28, 2014, Defendant made an initial appearance on a criminal complaint
23 charging him with committing mail fraud in April and May 2014. Based on the government's
24 proffer, the Court ordered Defendant detained pending a detention hearing on Friday, May 30,
25 2014. In the meantime, the Probation Department submitted a Form 12 in CR 08-222 WHA
26 charging Defendant with violating the terms of his supervised release based on the mail fraud

1 charged in the complaint. Defendant made his initial appearance on the Form 12 on May 30,
2 2014. Defendant was represented by Elizabeth Falk of the Federal Defenders Office and the
3 Government was represented by Douglas Sprague.

4 Pretrial Services submitted a report to the Court and the parties that recommended
5 detention. The government renewed its motion for detention, and Defendant opposed. Proffers
6 and arguments regarding detention were submitted by the parties at the May 28 and May 30
7 hearings.

8 Because Defendant is charged with a supervised release violation, he bears the burden of
9 establishing by clear and convincing evidence that he is not a flight risk or a danger to the
10 community. Fed. R. Crim. P. 32.1(a)(6); 18 U.S.C. § 3143; *United States v. Clanton*, 2013 WL
11 5958147 *2 (N.D. Cal. Nov. 7, 2013). Defendant proposes that he be released to a halfway house.
12 The Court finds that he has not met his burden.

13 With regard to a danger to the community, District Judge William Alsup found in March
14 2011 that Defendant “has a history of doling out threats of violence, and several individuals have
15 obtained restraining orders against him.” (CR 08-0222 WHA, Dtk. No. 163.) This Court makes
16 the same finding based on the Government’s proffer at the May 28 and May 30 hearings. This
17 Court’s finding that Defendant has not established that release to a halfway house would
18 sufficiently mitigate any danger to the community is also based upon the Court’s personal
19 observation of Defendant’s demeanor at the May 28 and May 30 hearings. Further, at this time
20 Defendant is unable to offer any sureties.

21 With regard to a risk of non-appearance, the Court does not find that Defendant will not
22 appear at court as ordered. He has long-standing ties to this community and has always made his
23 many prior court appearances. The Court does find, however, that he is not amenable to
24 supervision, that is, he has not demonstrated he will comply with the other terms of his supervised
25 release; in particular, he has not demonstrated that he is able to comply with the strict rules of the
26 halfway house. Again, this finding is based in part on the Court’s observation of Defendant’s
demeanor. In addition, on October 13, 2013, Defendant admitted to having violated the terms of

1 his supervised release. (*Id.* Dkt. No. 231.) Specifically, he admitted to two counts of failing to
2 truthfully answer inquiries by the probation officer and was sentenced to an additional year of
3 supervised release. (*Id.*) The conduct at issue in the criminal complaint and the Form 12 are
4 similar to the previous violation in that it, too, involves misrepresentations. And, finally,
5 Defendant does not have any sureties at this time.

6 Accordingly, pursuant to 18 U.S.C. § 3142(i), IT IS ORDERED THAT:

- 7 1. Defendant be, and hereby is, committed to the custody of the Attorney General for
8 confinement in a corrections facility;
9 2. Defendant be afforded reasonable opportunity for private consultation with
10 counsel; and
11 3. On order of a court of the United States or on request of an attorney for the
12 government, the person in charge of the corrections facility in which defendants are confined shall
13 deliver defendant to an authorized deputy United States marshal for the purpose of any appearance
14 in connection with a court proceeding.

15 IT SO ORDERED.

16 Dated: May 30, 2014



HON. JACQUELINE SCOTT CORLEY
United States Magistrate Judge